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Summary record of the 38th meeting
Held at Headquarters, New York, on Thursday, 25 March 2004, at 10 a.m.

Chairman: Mr. Bouheddou ..... (Algeria)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Kuznetsov

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04-28332 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 127: Human resources management (*continued*) (A/58/283, A/58/666; A/C.5/58/L.13)

1. **Ms. McCreery** (Assistant Secretary-General for Human Resources Management), replying to the questions raised by various delegations at the Committee's 35th meeting, said that the first part of her written replies contained clarifications about the staff members who had been promoted or recruited to fill decision-making posts in the Secretariat. With regard to the freeze on the recruitment of staff in the General Service category, more consultations were needed with the Department of Management, in view of the consequences of any decision to exempt certain categories of staff from the freeze. The second part of her written replies clarified some of the questions raised by delegations concerning the Secretary-General's bulletin on family status for purposes of United Nations entitlements (ST/SGB/2004/4). In that connection, it should be pointed out that the Organization had always determined matters of personal status by reference to the law of the nationality of the staff member concerned, in order to avoid conflicts between different values and to ensure respect for the social and cultural diversity of its staff. Such a criterion was completely neutral and could not contravene the national law of Member States. Since the founding of the Organization, the Secretary-General, as its chief administrative officer in accordance with Article 97 of the Charter, had laid down the policies to guide the Secretariat in the interpretation and implementation of the Staff Regulations and Rules. However, the Secretary-General's interpretation did not affect decisions related to pensions, which lay with the Joint Staff Pension Board. On the question of whether the bulletin was consistent with the Staff Regulations and Rules, the definitions used in the Staff Regulations and Rules were sufficiently broad to allow for changes in the laws of the country of origin of staff members with respect to family status. The Office of Human Resources Management dealt with issues related to the interpretation of the Staff Regulations and Rules and where that interpretation was likely to affect a number of staff members, it was announced in an administrative circular. With regard to the bulletin, consultations were held both with the Coordinating Committee for International Staff Unions and Associations of the United Nations system (CCISUA) and with the Federation of International Civil Servants' Associations (FICSA).

2. **Mr. Farid** (Saudi Arabia) said that the Secretary-General's bulletin amounted to an amendment of the provisions of the Staff Regulations and Rules. The General Assembly had not taken any decision with regard to the definition of "family" for purposes of entitlements. Staff regulation 12.3 provided that the full text of provisional staff rules and amendments should be reported annually to the General Assembly and if the Assembly considered that a rule or provisional amendment was incompatible with the Staff Regulations and Rules, it could decide to eliminate or modify it. The Staff Regulations and Rules made no mention of "domestic partnership", and the Secretariat should therefore have requested the Assembly to review the new terminology provisionally so that Member States could request its suppression or modification. The bulletin had adopted a new term, "domestic partnership", which would have consequences for entitlements, while the Staff Regulations and Rules referred only to "spouses", a term which, according to the dictionary definition, referred to a man and a woman, since that was the natural law for the preservation of the species.

3. **Ms. Arce de Gabay** (Peru) said that her delegation had carefully considered the matter. Without entering into a conceptual debate, it wished to express its support for the initiative of the Secretary-General, since it considered that the matter fell within his purview.

The meeting was suspended at 10.30 a.m. and resumed at 10.45 a.m.

4. **Mr. Tootoonchian** (Islamic Republic of Iran) asked what type of document the 1981 memorandum, which had been referred to as the basis for the bulletin, was. As for the definition of "spouse", the Staff Regulations and Rules contained numerous provisions that referred to that term and which could perhaps be applied in a manner different from the traditional concept of spouse.

5. **Ms. Stanley** (Ireland), speaking on behalf of the European Union, reiterated the view that the bulletin did not amend the Staff Regulations and Rules and that the Secretary-General had the prerogative to implement the provisions of the Staff Regulations and Rules. She

also requested confirmation that the bulletin would be applied only to staff members whose national law recognized that type of family ties and that the 1981 memorandum of the Office of Legal Affairs had set out the Organization's practice for determining personal status by reference to the law of the staff member's country of nationality.

6. **Mr. Daté-Yao** (Côte d'Ivoire) said that the Fifth Committee was faced with a very delicate matter that exceeded its competence for administrative, budgetary and financial matters. The Secretary-General was empowered to interpret a text in his capacity as the Organization's chief administrative officer. But the text in question referred to spouses, who together with their children were the foundation of the family and who were different persons both in the eyes of the law and in terms of gender. In attempting to interpret in an imprecise manner what was in fact obvious, one ran the risk of getting lost in conjecture and of undermining the spirit and letter of the Staff Regulations and Rules as it concerned the concept of "spouse".

7. **Mr. Elnaggar** (Egypt) drew attention to the first paragraph of the bulletin, which stated that under the Staff Regulations and Rules, when a staff member had "more than one nationality", the Organization would recognize under "applicable rules" the nationality of the State with which the staff member was "most closely associated". He would welcome clarification of the legal meaning of the latter expression and an explanation of what was meant by "applicable rules". In his view, the nationality of a staff member was the one that he or she had at the time of recruitment. With regard to the retroactive application of the bulletin, which raised the possibility of lawsuits against the Organization, in Judgement No. 82, the Administrative Tribunal ruled that an amendment could not have adverse retroactive effect on a staff member, but that there was nothing to prevent the Staff Regulations and Rules from being amended if the amendment affected only the benefits and prerogatives derived from service after its adoption.

8. In the Secretariat's written replies, it was stated that the 1981 memorandum had been issued to remedy the lack of a definition of the terms "spouse" and "marriage", which could be used to determine family status and related entitlements. Consequently, it was not necessary to seek the agreement of the General Assembly on the matter. That being said, the question arose as to why the bulletin had been issued if the principle that it laid down was already being followed.

9. It would also be helpful to clarify two statements contained in the written replies provided by the Secretariat, namely, that national law was used to determine the family status of a staff member but not the entitlements under that status, and that, by virtue of Article 97 of the Charter, the Secretary-General was authorized to lay down rules and policies to guide the Secretariat in the interpretation and implementation of the Staff Regulations and Rules. The Secretariat must also clarify whether the Staff Regulations and Rules must be implemented with due regard for the bulletin or vice versa. On the question of pension entitlements, it should be recalled that the General Assembly had not taken any decision on the matter because it needed more information. Lastly, the Secretariat should provide exact figures on the number of Member States that recognized domestic partnerships and not merely state that it was a relatively small number of countries.

10. **Mr. Berti** (Cuba) said that his Government had always defended the principle that there should be no discrimination on the basis of race, sex, culture or religion and had applied that principle since 1959 both domestically and at the international level. Nevertheless, Cuba could not accept that administrative instructions should be used to promote concepts, such as sexual orientation, about which there was no intergovernmental agreement, which was the real intent of the Secretary-General's bulletin. His delegation was therefore opposed to any administrative instructions which re-interpreted or distorted General Assembly resolutions adopted by Member States. Implementation of the bulletin should therefore be suspended until the General Assembly took a decision on the matter.

11. **Mr. Dutton** (Australia) reiterated that the Secretary-General had not amended the Staff Regulations and Rules in his bulletin but had updated his interpretation of the them because the legal definition of "spouse" and "child" had changed in many Member States. The bulletin did not propose a new concept of the family; it simply indicated that the Secretary-General would interpret the Staff Regulations and Rules in accordance with national law. That long-standing principle scrupulously respected the cultural differences between Member States. There was no clear definition of family status in the staff Regulations and Rules nor should there be. That was

the only way to manage an organization with 191 Member States and very diverse concepts of the family.

12. **Mr. Honninstad** (Norway) said that a debate on the definition of terms such as "spouse" and "family" was a dead-end street. Family status was not defined in the Staff Regulations and Rules nor should it be. The only applicable principle was that of the national law. It had been argued that foreign practices and laws were being imposed on other Member States, an argument which did not apply in the current debate. He hoped no more time would be spent on the matter, given that there were many important issues before the Committee at the current session.

13. **Mr. Aamer** (Bahrain) said that his delegation wished to associate itself with the statement made by the representative of the Islamic Republic of Iran on the subject of the Secretary-General's bulletin. The Kingdom of Bahrain was founded on Arab values derived from the Islamic Shariah and it therefore supported all human rights in accordance with that holy law and within the limits prescribed by its religion. Bahraini society was open and civilized. It embraced all kinds of religious faiths and its Constitution guaranteed equality between all human beings. In order to be legal, marriage must be between a man and a woman, who must form a family. The United Nations should provide benefits and entitlements in order to preserve that nucleus, which was the basic building block of society and reflected the very nature of man as created by God. It was important to maintain the high moral values of the Organization, which worked for peace, security, tolerance and fundamental freedoms and human rights. No measures should be adopted which did not respect all of the faiths and religious beliefs that were part of human civilization, and any exceptions to or deviations therefrom must be rejected. He hoped that the Secretary-General would review his very controversial decision, the repercussions of which would be an obstacle to collective action by Member States, which was the cornerstone of the Organization.

14. **Mr. Farid** (Saudi Arabia), referring to the Secretariat's written replies concerning previous practice in the interpretation of Staff Regulations and Rules, according to which, in certain cases, the Office of Human Resources Management interpreted the Staff Regulations and Rules, did not believe that the introduction of flexible working arrangements was a satisfactory example. In the current case, a new term, "domestic partnership", had been introduced, which had never been used since the establishment of the United Nations, while the Office of Human Resources Management could certainly adopt flexible working hours, it could not introduce a new concept that would require the Organization to pay entitlements to staff members. Furthermore, his delegation had enquired as to the number of States or countries which recognized such unions and the Secretariat had responded that it could not provide statistics or percentages in that regard. The Secretariat must provide an answer to the question which concerned a very sensitive issue. Nor had the Secretariat replied to his delegation's question as to whether any such entitlement had been paid since issuance of the bulletin. If the General Assembly rejected the bulletin and declared it null and void, and the Secretariat requested the staff member to return the money, the staff member would probably sue the Organization and Member States would have to bear the costs.

15. **Mr. Taha** (Sudan) said that his delegation supported the statements made by the representatives of Egypt, the Islamic Republic of Iran and Saudi Arabia.

16. **Ms. Buchanan** (New Zealand) said that the United Nations was a diverse organization which reflected the social and cultural richness of all Member States, but which, from a practical point of view, required a system to determine and manage staff entitlements. According to the Secretariat's reply, the long-standing principle of respecting national law was applicable to marriage, dissolution of a marriage and dependent children. In that regard, she asked what were the alternatives to that practice, which had been adopted so that the Organization could function. From a political point of view, the practice allowed for recognition of the diversity of Member States and guaranteed that, in matters relating to family status, the laws of a country would apply to its citizens. It would be unacceptable to impose the legislation of one Member State on nationals of another State. The Secretariat should confirm that the bulletin was not an attempt to recognize or validate any particular form of relationship. It merely reaffirmed the applicability of national law in determining the family status of a staff member. It was important to recall that the position of the Secretariat was one of neutrality when considering the issue. It would also be helpful if the Secretariat clarified that that principle had been applied since the

early days of the Organization and had not been formulated in the 1981 memorandum. With regard to the amendments relating to pension requests, the Secretariat could perhaps confirm that only the United Nations Joint Staff Pension Board could make changes to the Pension Fund. Lastly, she recalled that over the years other controversial issues relating to family status, such as divorce, had arisen and that none of those issues had been considered by the General Assembly, in accordance with the principle that the law of nationality should apply.

17. **Mr. Chaudhry** (Pakistan) asked whether the current practice could have legal consequences. The existence of various types of family had been recognized in the outcome document of the International Conference on Population and Development, held in Cairo. However, a number of countries, not all of them Islamic, had expressed reservations, since they believed that the only possible type of family was the traditional family. If that practice continued, it could create a precedent that could allow for the modification of certain international laws. That was important because there were many other related documents which stated that national laws must be aligned with international law. That would place countries which did not recognize the concept of "domestic partnership" in a difficult legal position. With respect to the administrative effects of the practice, it was obvious that the Secretary-General was the chief administrative officer of the Organization and had the authority to promulgate whatever standards he deemed necessary, but that there were also other standards which were approved by the General Assembly. It was not clear from the Secretariat's response whether a survey had been done prior to issuance of the bulletin to ensure that it was in conformity with the Staff Regulations and Rules and that it would not be necessary to introduce changes or amendments to avoid inconsistencies between the existing standards and what was being done in practice. The budget of the United Nations was used basically to pay the salaries of staff, and it was therefore important to know how the bulletin would affect those States which did not recognize such practices and whose assessed contributions would be used to provide entitlements which were unacceptable in their eyes.

18. **Mr. Elnaggar** (Egypt) said with reference to the issue of domestic partnerships, that there could be conflicts between three sets of national laws: that of the country of nationality of the staff member, that of the country of nationality of the other domestic partner, and that of the host country. In addition, the distinction that the law of some countries made between marriage and domestic partnership gave rise to different rights and benefits. He therefore wished to reiterate his question as to whether, by equating the two concepts, the Secretary-General's bulletin did not go beyond the provisions of national laws. It would also be useful to hear the Secretariat's views on the financial implications of the measure and on the use of new terms on which there was no agreement, including terms that did not appear in the Staff Regulations and Rules. The latter contained references to terms such as "spouse" and to the traditional concept of family. Inclusion of the term "domestic partnership" in the bulletin could be interpreted as amending the Staff Regulations and Rules. His delegation was not opposed to the application of the law of nationality of staff members, provided that all such laws were applied on an equal basis and without making value judgements.

19. **Mr. Al-Eryani** (Yemen) said that his delegation supported the statements made by the representatives of Egypt, the Islamic Republic of Iran and Saudi Arabia. The Secretary-General's bulletin might promote new concepts that ran counter not just to the culture and traditions of his country, but also to divine laws and the law of nature. He therefore hoped that the Secretary-General would reconsider the issuance of the bulletin.

20. **Mr. Kovalenko** (Russian Federation) said that he was pleased that the discussion was taking a practical and constructive turn. Whatever the social, religious or cultural differences between Member States and their citizens, the debate must focus on legal and administrative issues. The Secretary-General's bulletin provided a reminder of long-established practice that, in matters of family status, the Staff Regulations and Rules applied, taking as a point of reference the law of the country of the staff member concerned. The problem was the lack of a direct link between the determination of family status under national law and the payment of entitlements. Entitlements were determined by the Staff Regulations and Rules. The fact that national law could be applied in determining the family status of a staff member did not mean that new categories of beneficiaries were being accepted. Staff rule 103.24 clearly defined dependants. Primary dependants were dependent spouses and children.

Secondary dependants were also defined. If the intention was to grant entitlements to domestic partners, the Staff Regulations and Rules would have to be appropriately amended. The Russian Federation was not opposed to such a step, provided that the established practice was followed. It was for the Secretary-General to propose the amendments he deemed appropriate. They would then have to be approved by the Member States.

21. **Ms. Santos-Neves** (Brazil) said that she was fully satisfied with the Secretariat's replies and emphasized that the Secretary-General had the authority to issue guidelines to facilitate the application of the Staff Regulations and Rules. The issue in question was the choice of applicable law, not the potential introduction of new concepts. In that connection, the solution adopted in the bulletin, namely, the application of national law, was the most reasonable, given the diversity of the membership of the United Nations and the need to prevent the discrimination that would result if an individual, by virtue of working for the Organization, were unable to exercise rights to which he or she would have been entitled had the individual stayed in his or her own country. Consequently, Brazil did not share other delegations' concern to know how many Member States recognized domestic partnerships.

22. **Mr. Rahman** (Bangladesh) said that the practice of determining the family status of staff members by applying the law of the country of nationality was not "consistent", as the Secretariat had claimed. If it had been, there would have been no need to issue a bulletin on the matter. The Secretariat had also pointed to the authority for interpretation conferred on the Secretary-General by Article 97 of the Charter, but there was no reference to such authority in Article 97. The Secretariat should clarify which Article conferred on the Secretary-General the authority to interpret and in what situations that authority could be used. The problems raised by the Secretary-General's bulletin were more than just a question of interpretation and were matters of the utmost importance.

23. **Ms. Chebomui** (Kenya) said that, in her country, marriages and similar relationships between individuals of the same sex were considered unnatural and constituted a crime. In addition, it was traditionally and universally accepted that the family unit, based on a relationship between a man and a woman, was the foundation of human society. Introducing a new concept of "domestic partnership" raised many questions of interpretation. When the issue of sexual orientation had arisen in the context of Beijing +5 and the Commission for Social Development, participants had failed to agree on the meaning of a term which could also encompass domestic animals or pets. The exact legal meaning of the term must therefore be known before any consideration could be given to the possibility of accepting it. The Secretary-General's bulletin entailed an amendment of the definition of family and dependants in the Staff Regulations and Rules. Although it had been argued that the Staff Regulations and Rules did not specifically define "family", no other United Nations forum had accepted the recognition of what was termed "sexual orientation". Against that background, it was surprising that such a contentious issue had been raised in the Fifth Committee. Kenya joined the other delegations that had requested a list of the States that recognized such unions and the suspension of the bulletin's application until the General Assembly decided on the definition of "family" and made the recommendations it considered appropriate to amend the Staff Regulations and Rules. Only then would Kenya be prepared to discuss the matter, since all Member States must have the right to express their opinion on matters that might affect them directly or indirectly. During the debate on Pension Fund payments at the Assembly's fifty-fifth session and, subsequently, in section V of its resolution 57/286, the General Assembly had taken note of the review undertaken by the Joint Staff Pension Board and had requested the Board to examine the administrative and financial aspects of the matter, as a whole, and to report thereon to the Assembly at its fifty-ninth session. Perhaps the Secretary-General should have waited until the Assembly had examined the report, since its deliberations on the matter might have provided guidance on the direction to take.

24. **Mr. Elji** (Syrian Arab Republic) agreed that national law should be the basis for determining the provisions that should apply to a staff member. However, the Staff Regulations and Rules applied the term "spouse" to staff members, based on the traditional concept of the family. A literal interpretation of the Staff Regulations and Rules therefore left no room for expanding the concept of "spouse". The Secretariat should therefore abide by the definitions given in the dictionaries of every country in the world and on which there was consensus. Lastly, he would like more information on the freeze on the

recruitment of language and General Service staff and, with reference to the staffing table, he requested an official response from the Secretariat so that the errors regarding exemptions could be corrected.

25. **Ms. Stanley** (Ireland), speaking on behalf of the European Union, reaffirmed that the countries of the European Union respected the cultural diversity of the other Member States and therefore hoped that that respect would be reciprocated. Even if only one Member State recognized other forms of marriage or domestic partnership in its national law, it would have every right to do so.

26. **Mr. Farid** (Saudi Arabia) said that respect for the laws of other countries should not impose an obligation on States to contribute to expenditures in connection with matters that were contrary to their own laws. Those countries that wished to grant their nationals rights attached to a domestic partnership must bear the cost of the resulting entitlements so that the financial burden did not fall on the United Nations or on Member States which did not recognize such relationships. The issue was very simple: marriage was the union between a man and a woman.

27. **Mr. Tootoonchian** (Islamic Republic of Iran) asked whether or not the Secretariat had a specific mandate to stay abreast of developments in the domestic law of Member States and reflect them in documents like the bulletin in order to universalize them in some way.

28. **Mr. Dutton** (Australia) said that he agreed with the representative of Ireland that the practices of the different countries must be respected. The Fifth Committee was not the place to discuss the concept of the family and it should limit itself to a consideration of the administrative aspects of the issue. With regard to the financial aspects, he recalled that situations had arisen in the past in which, in order to determine whether a staff member had a dependent spouse or children, the Secretariat had applied a national law that had no counterpart in the legislation of other States.

29. **Mr. Kramer** (Canada) said that the Committee should not attempt to resolve issues as complex and as charged with social and cultural implications as marriage, family and domestic partnerships. It should focus instead on the issue within its remit, namely, administrative policy. For decades, the United Nations had defined the family status of its staff members on the basis of national practice. The ideal would be to have a single definition of "family", but the diversity of Member States seemed to exclude that possibility for the near future. Spousal relationships were a key element of the entitlements system and all the Secretary-General was doing in his bulletin was to recognize for those purposes relationships which were recognized as spousal or the equivalent in the staff member's country of origin, without entering into considerations of sexual orientation. The question was what alternative existed to using national norms. He wondered whether the expression "domestic partnership" in paragraph 4 of the bulletin referred to relationships that were recognized as spousal or the equivalent in domestic law, and whether rule 103.24 of the Staff Regulations and Rules, which defined dependency, should be interpreted in that light, or whether, on the contrary, the intention was to introduce a new concept by using that term.

30. **Mr. Elnaggar** (Egypt) stressed the importance of respecting the domestic law of all countries and the ideological, social and cultural diversity of Member States and of the Organization as a whole. With reference to the statements made by the representatives of Australia and Canada, he enquired whether or not, in that context, the application of national law by the Secretariat was in keeping with the letter of rule 103.24.

31. **Ms. McCreery** (Assistant Secretary-General for Human Resources Management), replying to the questions posed by delegations, said that the bulletin had not been submitted to the General Assembly because it did not constitute an amendment to the Staff Regulations and Rules but rather an interpretation thereof. With regard to the reasons for the issuance of the bulletin in January 2004, she recalled that, in general, the Office of Human Resources Management was responsible for interpreting the Regulations and Rules but that, when the interpretation affected a number of staff members, it could be announced in an administrative issuance in order to clarify matters. Moreover, since neither the Regulations nor the Rules had been amended, the issuance of the bulletin would in no way alter the definition of the term "spouse".

32. Turning to the technical question concerning rule 104.8, she recalled that, in accordance with that rule, the United Nations would not recognize more than one nationality for each staff member and that, when more than one State had legally accorded its nationality to a staff member, the latter's nationality for the purposes

of the Staff Regulations and Rules would be that of the State with which the staff member was, in the opinion of the Secretary-General, most closely associated. It should be pointed out that, once a staff member's nationality had been determined, he or she was not permitted to change nationality in order to obtain family entitlements and benefits, except in exceptional cases where the staff member was obliged to adopt the second nationality.

33. As far as the United Nations entitlements mentioned in the bulletin were concerned, all the national laws relating to the type of union in question had been promulgated recently. If a staff member demonstrated that his or her union with another person had been recognized by the country of his or her nationality, the relevant entitlements could be granted retroactively, provided that the request was submitted within one year. The conditions were exactly the same as those applicable in the case of marriage. To date, two cases had been approved, five requests had been submitted to the Permanent Missions with a view to determining whether the staff member's union was legally recognized, and six cases were being reviewed by the Office of Human Resources Management prior to their submission to the Permanent Missions.

34. Turning to the criteria that could be adopted by the Organization as an alternative to the application of national law to determine family status, she said that if, for example, attempts were made to establish universal standards applicable to all staff members, serious problems would arise because certain standards could run counter to the culture of some countries. On the other hand, the issuance of the bulletin did not mean that any specific type of relationship or union was being endorsed or promoted. The Joint Staff Pension Board would be responsible for any possible amendments to pension application forms. In the event that the recognition by the United Nations of a staff member's family status by virtue of the domestic law of the country of his or her origin conflicted with the national law of the host country, it would fall to the latter to determine whether or not to grant visas to the members of the staff member's family. Lastly, Canada's interpretation of paragraph 4 of the bulletin was correct: it was simply attempting to clarify the conditions applicable to spousal entitlements and did not introduce a new category.

35. **Mr. Rashkow** (Director of the General Legal Division, Office of Legal Affairs), referring to the opinion issued by the Office of Legal Affairs in 1981 concerning the recognition of family status, recalled that that text was not an administrative issuance or an amendment to the Staff Regulations and Rules but merely a legal opinion on the determination of family status in light of the well-established policy and practice of the United Nations of taking as a reference point the law of the staff member's country of origin. With regard to the possible repercussions of the criteria set out in the bulletin on the domestic law of countries that did not recognize that type of relationship, he stressed that the publication of those criteria was not in any way an attempt to establish an international legal standard and that the application of national law would not affect States that were governed by different standards.

36. **Ms. McCreery** (Assistant Secretary-General for Human Resources Management) emphasized that national law was used to determine family status, not entitlements. It was impossible to use national law to determine entitlements and, consequently, the Office of Human Resources Management endeavoured to ensure that, within the Secretariat, benefits were granted in an equitable manner to all staff members. In reply to the question about the freeze on the recruitment of General Service staff posed by the representative of the Syrian Arab Republic, she repeated that it would be necessary to hold consultations within the Secretariat before giving a reply.

37. **Mr. Rajeh** (Saudi Arabia) said that the national laws of all United Nations Member States must be respected. However, as pointed out by the representative of Australia, the various countries viewed the concept of partnership from many different cultural and religious perspectives. In addition, from a technical standpoint, the domestic law of some Member States allowed pets to inherit property. He wondered whether, in that case, the United Nations should pay entitlements to an animal.

38. **Mr. Elnaggar** (Egypt) said that the question relating to the term "domestic partnership" and its inclusion in the Staff Regulations and Rules had not been answered. With regard to the issue of whether the Secretary-General's bulletin was an interpretation of or an amendment to the Staff Regulations and Rules, he recalled that, in a press release, the Office of Legal Affairs had argued that it was an interpretation, while the Administrative Tribunal had described it as an amendment. The Secretariat's confirmation that the

bulletin could be applied retroactively indicated that it was an amendment. He also asked if the potential financial implications of such retroactive application had been considered. The Secretariat had provided information about the number of cases brought, but it was more important to know how many countries recognized that type of union. According to the Secretariat, the number of cases had necessitated the issuance of the bulletin. He would like to know exactly how many requests had been submitted over the years and what had happened to them. In addition, he wished to know whether the bulletin went beyond national law by equating marriage and domestic partnership, even though national law did not regard them as equivalent. Those technical questions must be answered before the discussion could move forward.

39. **Mr. Dutton** (Australia), referring to the comments about pets made by the representative of Saudi Arabia, pointed out that the Staff Regulations and Rules referred expressly to spouses and children and that, to his knowledge, no Member State included animals in that category. Accordingly, that issue bore no relation to entitlements. In that connection, he asked the Secretariat to confirm that, for the purposes of the Staff Regulations and Rules, pets could be regarded only as household effects.

40. **Ms. Stanley** (Ireland), speaking on behalf of the European Union, said that, for the second time, disrespectful and provocative statements had been made that were not worthy of further consideration. She called once again for respect for all Member States and their laws.

41. **Mr. Elji** (Syrian Arab Republic) reiterated that the Secretariat was trying to interpret that a number of General Service posts were exempt from the recruitment freeze. That exemption must also include Arabic language editors working in the Department of Public Information and on the United Nations website, since that was the General Assembly's intention.

42. **Ms. McCreery** (Assistant Secretary-General for Human Resources Management) assured the representative of the Syrian Arab Republic that the Secretariat was not attempting to reinterpret the General Assembly's instructions, but said that, in order to implement them, it was necessary to look carefully at the categories exempt from the freeze and more time was needed for consultations. Turning to the issue of pets, she said that it must not be confused with the issue of domestic partners. In some countries, it was possible to leave property to a pet, but within the Secretariat only human beings could be beneficiaries of pensions and entitlements. Furthermore, pets were not regarded as household effects for purposes of transfers or travel and the costs associated with their transport were the sole responsibility of the staff member concerned.

43. **The Chairman** said that the Committee had concluded its general debate on agenda item 127.

The meeting rose at 1.05 p.m.

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Summary record of the 39th meeting
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Chairman: Mr. Bouheddou (Vice-Chairman) ..... (Algeria)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Kuznetsov

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Completion of the work of the Fifth Committee during the first part of the resumed fifty-eighth session of the General Assembly

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04-29614 (E)

In the absence of Mr. Kmoníček (Czech Republic), Mr Bouheddou (Algeria), Vice-Chairman, took the Chair.

The meeting was called to order at 10.20 a.m.

Agenda item 120: Programme budget for the biennium 2002-2003 (*continued*) (A/C.5/58/L.58)

Report of the Joint Inspection Unit on support costs related to extrabudgetary activities in organizations of the United Nations system (A/C.5/58/L.58)

Draft resolution A/C.5/58/L.58

1. *Draft resolution A/C.5/58/L.58 was adopted.*

Agenda item 121: Programme budget for the biennium 2004-2005 (*continued*) (A/C.5/58/L.61 and A/C.5/58/L.65)

Special Court for Sierra Leone (A/C.5/58/L.65)

Draft resolution A/C.5/58/L.65

2. *Draft resolution A/C.5/58/L.65 was adopted.*

3. **Ms. Nakian** (United States of America) said that her country was a leading proponent of the Special Court for Sierra Leone and that it was imperative to ensure that the Court had sufficient funding to continue its work. The United States delegation was therefore pleased that the Secretary-General had been authorized to enter into commitments in an amount not to exceed $16.7 million to supplement the financial resources of the Court for the period from 1 July to 31 December 2004. She looked forward to the supplemental information to be communicated by the Court to the Advisory Committee on Administrative and Budgetary Questions and to the Fifth Committee, which would allow them to consider how to fund the balance of the Court's expenses for 2005, taking into account the recommendations of the Secretary-General. She reiterated her delegation's appeal to Member States to continue to make voluntary contributions to the Court and to honour existing pledges.

4. **Mr. Kozaki** (Japan) said that the granting of a subvention to the Special Court for Sierra Leone was an exceptional measure that should not set a precedent. The Japanese delegation looked forward to the report on the funding of the Special Court, which the Secretary-General would submit to the General Assembly at its fifty-ninth session.

Capital master plan (A/C.5/58/L.61)

Draft decision A/C.5/58/L.61

5. *Draft decision A/C.5/58/L.61 was adopted.*

Agenda item 127: Human resources management (*continued*) (A/C.5/58/L.64)

Draft resolution A/C.5/58/L.64

6. **Mr. Eljy** (Syrian Arab Republic) said that draft resolution A/C.5/58/L.64 did not reflect certain questions that had been raised during the informal consultations and in the formal meetings, in particular the need to respect the principle of multilingualism and, to that end, increase the level of General Service staffing. The web pages of the Organization should be available in all official languages, particularly Arabic, but the Secretariat's resources were insufficient to ensure such availability. His delegation recalled that the issue had been raised on numerous occasions in reports of the Secretary-General and in resolutions of the General Assembly, including the resolution on the programme budget for the biennium 2004-2005, and hoped that the Committee would give the issue the attention it deserved during the next part of the Assembly's resumed session.

7. In that regard, his delegation emphasized that the Bureau of the Committee had acted irresponsibly in failing to schedule an additional meeting, as a number of delegations had requested. The failure of the Bureau to function in a transparent manner resulted in a waste of resources. The Bureau was not a General Assembly in miniature, its purpose was to facilitate the work of the Committee and not to become involved in the debate on substantive issues. Nevertheless, taking a constructive attitude, the Syrian Arab Republic would not oppose the adoption of the draft resolution by consensus.

8. **Ms. Stanley** (Ireland) drew attention to an error of translation in paragraph 3 of the French text of the draft resolution, where the word "*dispositions*" should be replaced by the word "*termes*".

9. *Draft decision A/C.5/58/L.64 was adopted.*

10. **Ms. Stanley** (Ireland), speaking on behalf of the European Union, the acceding countries Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the stabilization and association process countries Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and Serbia and Montenegro, the associated countries Bulgaria and Romania, and, in addition, Iceland, Liechtenstein and Norway, welcomed the efforts of all Member States to reach a compromise on an issue that had been the subject of long and delicate negotiations. The resolution undermined neither the prerogatives of the Secretary-General as the Chief Administrative Officer of the Organization nor the long-established principle that matters of personal status should be determined by reference to the law of nationality of the staff member concerned.

11. **Mr. Laurin** (Canada), speaking also on behalf of Australia and New Zealand, said that the Secretary-General should be able to decide on staff-management questions without prompting unwarranted interventions by Member States. He welcomed the concern for transparency manifested by the Secretariat in issuing bulletin ST/SGB/2004/4 as well as the Secretary-General's decision to continue to interpret the provisions of the Staff Regulations and Rules governing the payment of entitlements by reference to the law of nationality of the staff member concerned, as that principle ensured respect for the social, religious and cultural diversity of Member States and their nationals. There should be no ambiguity on that subject in the revised version of the bulletin to be issued by the Secretary-General.

12. **Ms. Santos-Neves** (Brazil), speaking also on behalf of Argentina, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela, said that the principle of referring to the law of nationality of the staff member to determine payment of entitlements is consistent with an Organization that defended respect for social, religious and cultural diversity. The delegations on whose behalf she spoke were concerned to preserve the Committee's working methods and had therefore decided to join the consensus reflected in the draft resolution, on the understanding that it called into question neither the prerogatives of the Secretary-General in his capacity as Chief Administrative Officer nor the principles that the personal status of staff members should be determined by reference to the law of nationality of the staff member concerned; the social, religious and cultural diversity of the Organization and its staff should be respected; and the Organization should maintain an appropriate neutrality with respect to the laws and social customs of Member States.

13. **Ms. Chebomui** (Kenya) said that in her country the only legal unions were those between a man and a woman, as provided for by the Constitution and the family laws, which expressly laid down the following principles: the family was the natural foundation of society and the social order, and every adult was entitled to start a family by marrying a person of the opposite sex, with the free consent of both parties. Many social problems, such as poverty, crime, illiteracy and disease, were exacerbated by the erosion of family structures around the world. By further exacerbating that phenomenon, same-sex marriages could only frustrate the achievement of the purposes set forth in Article 1, paragraph 3, of the Charter of the United Nations, which were to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character. It was well known that problems relating to the breakdown of family structures led to political instability and conflict, thereby contributing to increases in the budgets of peacekeeping operations.

14. It had been clearly demonstrated that countries that had legalized marriages between same-sex partners were also those in which, because of the introduction of family-planning policies, the overall population was in decline even as the proportion of elderly people continued to rise. That was a matter of particular concern, since more and more young people were attracted to that type of marriage. Moreover, it was known that 95 per cent of people who lived with a same-sex partner did not want to have children. One might well wonder whether mankind could continue to exist without children, or whether advocates of same-sex marriages did not favour the introduction of human cloning. The countries concerned should reconsider their policies. Her delegation had not opposed the adoption of the draft resolution, but had reservations concerning paragraph 1, which the Secretariat should interpret in accordance with the definition of the institution of the family provided in the Staff Regulations and Rules.

15. **Ms. Nakian** (United States of America) said that her delegation had been pleased to learn that the

Secretary-General would review the content of bulletin ST/SGB/2004/4. Because Member States had not been more closely consulted, its provisions might well lead to disagreements. Consideration should therefore be given to the views and concerns expressed by Member States in the Fifth Committee and the General Assembly.

16. **Ms. M'Rabet** (Tunisia) said that her delegation had supported the text of the draft resolution as drafted in English, but that the expression *situation de famille* ("family status") in the French text should be replaced by *statut personnel* ("personal status"), which seemed more faithful to the original.

17. **The Chairman** said that the French version of the draft resolution would be corrected to take into account the views that had been expressed.

18. **Mr. Chaudhry** (Pakistan) said that in his country marriage — understood as a union between a man and a woman — and the family were sacred institutions. His delegation had joined the consensus on draft resolution A/C.5/58/L.64 on the understanding that, when it was reissued, the text of the Secretary-General's bulletin would not include terms which might prove controversial and on which all delegations could not agree; that the definition of "personal status" for the purposes of entitlements would not serve as a pretext for influencing the intergovernmental debate on the concepts of family and marriage; and that the revised text would be issued as soon as possible and not kept indefinitely under consideration.

19. **Mr. Al-Bader** (Qatar) said that his delegation endorsed the statement of the representative of the Syrian Arab Republic, particularly regarding the posting of Arabic-language pages on the United Nations website, and that adequate resources should be allocated for that task.

20. **Mr. Davis** (Bahamas) said that his delegation wished to align itself with the position of Brazil. It had joined the consensus on the draft resolution, even though it had initially considered it unnecessary, judging that the Secretary-General had been fully within his rights and that there had been no discernible budget implications. The adoption of the resolution by the General Assembly did not mean that the Secretary-General could abandon the long-established principle that matters of personal status were determined by reference to the law of nationality of the staff member concerned, which was the only principle that could guarantee the equitable treatment of all staff members.

21. **Mr. Tal** (Jordan) said that the draft resolution adopted by the Committee was not satisfactory for any State or group of States. The Committee lacked discipline and transparency in its work and should set an example for reform, increasing its effectiveness by adopting draft resolutions that could be implemented and which were not open to differing interpretations.

22. **Mr. Ng'ongolo** (United Republic of Tanzania) said that his delegation had joined the consensus on the draft resolution on the understanding that the revised version of the Secretary-General's bulletin should not enter into force until it had been reviewed by the General Assembly, if it were determined that the bulletin amounted to an amendment to the Staff Regulations and Rules.

23. **Mr. Dhakal** (Nepal) said that, in the spirit of compromise, his delegation had joined the consensus, but on the understanding that the Secretary-General would take into account the laws in force in Member States and the views they expressed.

24. **Ms. Udo** (Nigeria), noting that the institution of the family was very important in her country, said that her delegation had joined the consensus on the draft resolution on the understanding that the Secretary-General, as Chief Administrative Officer, would continue to execute his functions in the knowledge that it was the role of the General Assembly to amend or add to the Staff Regulations and Rules. Her delegation had taken its decision only because paragraphs 2 and 3 of the draft resolution clearly provided that the content of the bulletin would be reviewed in the light of the views expressed by Member States and that, if it contained provisions that amounted to an amendment of the Staff Regulations and Rules, the General Assembly would rule on the matter. All future decisions involving the use of terms that were not unanimously approved should be submitted to the General Assembly, and the review of the bulletin and issuance of a revised version should be carefully done and as rapidly as possible.

25. **Ms. McCreery** (Assistant Secretary-General for Human Resources Management) said that, in accordance with the provisions of paragraphs 1 and 2 of the draft resolution, the Secretariat would continue to determine the personal status of staff members with reference to the law of their country of nationality and

that it would carefully review the bulletin and reissue it shortly.

26. Requests for entitlements submitted by staff members based on their personal status would be subject to verification by the permanent mission of the State of nationality of the staff member concerned. The Secretariat would process such requests after the missions had confirmed the validity of their status and entitlement under the law of nationality.

27. **Mr. Pulido León** (Venezuela) maintained that the Secretary-General's bulletin, when reissued, should not be taken up again by the Fifth Committee, since issues relating to family and marriage were not within its competence.

28. **Mr. Elnaggar** (Egypt) recalled that the General Assembly was a forum in which all opinions could be expressed and that its role was to ensure that all views were taken into account without any one being imposed on the others. His delegation would follow closely the decisions that would be taken to ensure that its own views had been duly taken into account.

29. **Mr. Eljy** (Syrian Arab Republic) said that he intended to submit to the Secretariat his comments on the Arabic text of the draft resolution. It was also his understanding that the bulletin would not be reissued without first being approved by the General Assembly and that it would be worded to reflect the views of all Member States.

Agenda item 129: Joint Inspection Unit (*continued*)

Reports of the Joint Inspection Unit (A/C.5/58/L.62)

Draft resolution A/C.5/58/L.62

30. *Draft resolution A/C.5/58/L.62 was adopted.*

Agenda item 131: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (*continued*)

Agenda item 132: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (*continued*)

Management review of the Office of the Prosecutor at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (A/C.5/58/L.60)

Draft resolution A/C.5/58/L.60

31. *Draft resolution A/C.5/58/L.60 was adopted.*

Agenda item 134: Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations (*continued*)

Implementation of paragraph 3 of General Assembly resolution 57/323 (A/C.5/58/L.63)

Draft resolution A/C.5/58/L.63

32. *Draft resolution A/C.5/58/L.63 was adopted.*

Participation of United Nations Volunteers in peacekeeping operations (A/C.5/58/L.59)

Draft decision A/C.5/58/L.59

33. *Draft decision A/C.5/58/L.59 was adopted.*

Agenda item 119: Review of the efficiency of the administrative and financial functioning of the United Nations (*continued*)

Questions deferred for future consideration (A/C.5/58/L.66)

Draft decision A/C.5/58/L.66

34. *Draft decision A/C.5/58/L.66 was adopted.*

35. **Ms. Udo** (Nigeria) said that, under the agenda item entitled "Review of the efficiency of the administrative and financial functioning of the United Nations", her delegation would like the Secretary-General to submit to the Committee at the Assembly's fifty-ninth session a working document providing more comprehensive information than the information that had been submitted at the current session on the geographical distribution of seats in the Joint

Inspection Unit, the Advisory Committee on Administrative and Budgetary Questions and the International Civil Service Commission.

36. **Ms. Lock** (South Africa) said that the Group of African States was concerned at the underrepresentation of Africans, especially women, and had therefore requested from the Secretariat information on the geographical and gender distribution of managerial posts, including those of programme managers, and on the impact of retirements in that regard. While the Secretariat had responded to that request by providing statistics, the African Group would like the information to be submitted in the form of a working document at the Assembly's fifty-ninth session.

37. **Mr. Elnaggar** (Egypt) said that his delegation supported the requests made by the representatives of Nigeria and South Africa.

Completion of the work of the Fifth Committee during the first part of the resumed fifty-eighth session of the General Assembly

38. After an exchange of courtesies, **the Chairman** declared that the Fifth Committee had completed its work for the first part of the resumed fifty-eighth session of the General Assembly.

The meeting rose at 11.35 a.m.